

IRWIN W. SWEENEY

IBLA 78-2

Decided March 23, 1978

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting mining claim recordation notices, NMC 8656 to 8664.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after October 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Determination of Validity -- Mining Claims: Recordation

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In

such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

APPEARANCES: Irwin W. Sweeney, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Irwin W. Sweeney appeals from the August 31, 1977, decision of the Nevada State Office, Bureau of Land Management (BLM), refusing to accept for recordation under section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2769, 43 U.S.C.A. § 1744 (West Supp. 1977), notices of location for the Red Hill No. 1, Sundown, and Sundown I to IV, VI to VIII lode mining claims (NMC-8656 to 8664). The claims were located on December 12, 1976, by Jess Nachiondo, Pete Cashueneut, and appellant. The State Office ruled that appellant had not recorded the claims within 90 days of their location as required by 43 U.S.C.A. § 1744(b).

Appellant's wife filed the notices of location in the BLM District Office, Winnemucca, Nevada, on March 11, 1977, 89 days after the claims were located. The District Office issued a temporary receipt for the filing fee. Subsequent events and their timing are not clear in the record. Apparently, District Office personnel examined the recordation documents shortly after March 11 and found them deficient. ^{1/} They informed appellant of this and asked him to correct the deficiencies and resubmit the documents to the BLM Nevada State Office. Thereafter, on August 29, 1977, 260 days after the claims were located, the recordation documents were filed in the State Office by the District Office. Whether these were the original documents filed on March 11 or documents filed at a later time is not clear.

The State Office refused to accept the notices of location for recordation because they were not timely filed in the proper BLM office as required by 43 CFR 3833.1-2(b) published at 42 FR 5298, 5301 (January 27, 1977). Thus, although appellant filed the notices of location at the BLM District Office within the required 90 days,

^{1/} The record does not indicate what deficiencies existed in appellant's recordation documents other than being filed in the wrong office. Appellant should clarify this before filing again. We note that Jess Nachiondo, in a letter to U.S. Senator Paul Laxalt, suggested that BLM was requiring the locators to hire a surveyor. We note that 43 CFR 3833.1-2(c)(9) states that the map requirements shall not require the owner of a mining claim to employ "a professional surveyor or engineer." 42 FR 5301.

the notices were not filed in the proper office, i.e., the BLM Nevada State Office, until 260 days after the claims were located.

Shortly after issuing its decision, the BLM Nevada State Director requested the BLM Director to authorize acceptance of appellant's attempted recordations. The State Director based this request on appellant's good faith attempt to record the claims, on apparently inadequate or incorrect information provided to appellant by both District and State Office personnel and on the unexplained time lag between the filing in the District Office and the filing in the State Office. By memorandum dated November 8, 1977, the BLM Director refused to authorize the acceptance of the notices. The refusal was based on the absence of evidence that BLM personnel misrepresented to appellant the regulations regarding the recording of the notices of location during the 90-day filing period. The Director stated that an additional county recording fee is not sufficient injury to warrant equitable relief. Finally, the Director concluded that there was no substantial evidence that appellant acted in good faith when he filed the notices of location in the District Office on the last day of the filing period. As our discussion below will show, there is no authority to waive the requirement, in any event.

In his Statement of Reasons, appellant states: "Please note by the original date on the check paid them that it was on time and before their (the BLM) so-called dead-line." The date on the check, as well as on the BLM temporary receipt, is March 11, 1977. The remainder of the Statement of Reasons consists of criticism of BLM actions generally in the western States. For the reasons stated below, we find that appellant failed to record his mining claims timely and therefore affirm the decision of the BLM State Office.

[1] In section 314 of the Federal Land Policy and Management Act, 43 U.S.C.A. § 1744 (West Supp. 1977), Congress required that all mining claims located on public land be recorded with BLM. The provision applicable to appellant states:

The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976, shall, within ninety days after the date of location of such claim, file in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. [Emphasis added.]

43 U.S.C.A. § 1744(b).

On January 27, 1977, the Department of the Interior published in the Federal Register final rulemaking for the regulations implementing the mining claim recordation requirements. 42 FR 5300-02. These

regulations restate the above-quoted statutory provision in the following manner:

The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of the claim or site filed under state law * * *. [Emphasis added.]

43 CFR 3833.1-2(b), 42 FR 5301. The new regulations also designated the "proper BLM office" for recording mining claims: "'Proper BLM office' means the Bureau of Land Management State office having jurisdiction over the area in which the lands subject to the regulations are located. (See 43 CFR 1821.2-1 for office location and area of jurisdiction.)" (Emphasis added.) 43 CFR 3833.0-5(g); 42 FR 5301. In the discussion which preceded the final regulations, the Deputy Assistant Secretary of the Interior stated at 42 FR 5298-99:

Some comments [to the proposed rulemaking (41 FR 54084 December 10, 1976)] suggested that the District Offices of the Bureau of Land Management be made the proper office for purposes of recording of mining claims. We did not accept that suggestion because the State Offices are the location of the master plats and our central records. [Emphasis added.]

Appellant filed the notices of location within 90 days of the location date but he filed them in the BLM Winnemucca District Office. He should have filed the notices in the BLM Nevada State Office in Reno.

[2] The failure of a mining claimant to file the notice of location in the proper BLM office within 90 days of location of the mining claim is "deemed conclusively to constitute an abandonment of the mining claim." 43 U.S.C.A. § 1744(c) (West Supp. 1977); 43 CFR 3833.4(a). When Congress enacted section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (West Supp. 1977), it did not authorize any waiver of the 90-day filing requirement. Southwestern Exploration Associates, 33 IBLA 240 (1977); Solicitor's Opinion, M-36889, 84 I.D. 188 (1977). Appellant filed his notices in the District Office when the plain language of the regulation indicates he should have filed them in the State Office. By filing only 1 day before the deadline set by Congress, he allowed himself no time to correct his mistake. This does not constitute timely recordation of his mining claims and the BLM State Office properly rejected them. His only recourse now is to relocate the claims and then file the new notices of location in the BLM Nevada

State Office together with the other information required by 43 CFR 3833.1-2, assuming the land remains available for the location of mining claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

The record in this case includes a memorandum from the Acting District Manager, Winnemucca, stating in part that:

There were some intermediate contracts between Simontacchi and the Sweeneys from March 11 to August 23, 1977. On August 23, Simontacchi called our state office and talked to Opal Berlin about problems with late filings (90 days after location) on claims located after October 21, 1976. She stated that they were having a lot of problems with filings being deficient in one way or another and that many filings had to be returned - and that there would be no problem if a filing was a few days late. Dennis Simontacchi then told Sweeneys that if they were a "couple of days" late it wouldn't make any difference, and for Sweeneys to get their filings in as soon as they could.

Thus, because of some indefinite instructions on our part, and some procrastination on their part, these filings were never completed.

The record also contains a memorandum from BLM's Nevada State Director, quoted in part below:

However, Mrs. Irvin Sweeney brought the certificates to the Winnemucca District Office on March 11, 1977 and deposited \$45.00 for the filing fees. This action took place 89 days after date of location. According to information in our files, the Sweeneys were under the impression that they had complied with the law. This apparently was a result of inadequate or incorrect information provided both by District and State Office personnel. It has not been determined why there was such a time lag between receiving the filings in the District Office and when they were finally received in the State Office.

Although a letter rejecting the claims has been issued and the filing fees returned, this office feels that the Sweeneys acted in good faith and tried to comply with the regulations which affected their mining operations. We request permission to receive the Certificates of Location and record the claims as originally located in order to protect the Sweeney's interest.

Had the filings been received in the State Office "a few days late" or "a couple of days late" it would then appear to be a matter which might merit equitable consideration. But here the recordation documents were filed in the State Office 260 days after the claims were located - 170 days late, and long after the District Office had informed both Irvin Sweeney and Jess Nachiondo that they would have to cure the discrepancies in the original filings and resubmit them to the State Office.

Under the circumstances the District Manager's comment that there was "some procrastination" on the Sweeneys' part would seem an understatement. Appellant has made no effort to explain or excuse the delay. The State Director's memo notes, "It has not been determined why there was such a time lag between receiving the filings in the District Office and when they were finally received in this office." His memo also summarizes that because of inadequate or incorrect information the Sweeneys were apparently under the apparent impression that they had complied with the law. Common reason should have told them otherwise. The filings had been found to be incomplete by the District Office, and they had been so advised. They had been told to correct them and refile them in the proper office. Their filing fees had not been accepted, and had been given back. Under the circumstances it is incredible that they then delayed refiling for several months because they assumed that what they had done was legally sufficient.

Accordingly, I cannot regard this as a case which merits equitable consideration.

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

The record is unclear whether appellant would have been able to make timely filing in the BLM State Office, had the Winnemucca District Office not indicated there would be no problem if the filing was a few days late.

I do not feel we should reach the question of whether a claim must be deemed abandoned solely because it was filed in a District Office rather than the State Office. In a sense, a State Office could be deemed to include its District Offices. Here, however, appellant has not shown that any of its aborted filings of March 11, 1977, were otherwise legally sufficient.

Because appellant has not sustained his burden of showing any circumstance wherein he could be entitled to relief, I concur in the result.

Joseph W. Goss
Administrative Judge

